

November 7th, 2016

United States District Court
Southern District of Texas
FILED

NOV 15 2016

David J. Bradley, Clerk of Court

To: United States District Court
For the Southern District of Texas
Houston Division

P.O. Box 61010
Houston, Tx 77208

RE: Noe Armando Artiga V. Lori Davis
Civil Action No: H-16-2219

4:16-CV-02219

Petitioner is writing this letter to comply with the courts order #4. Currentley there has been a ruling by the Court of Criminal Appeals dismissing his application. This ruling has been made in light of the trial court erroneously concluding that he has a direct appeal pending over his conviction. See attached states brief and paperwork. Petitioner currentley only has a direct appeal over the denial of a free copy of his transcripts motion that the trial court denied. As there is is no direct appeal pertaining to attacking his conviction he is close to being time barred. Mark V. Thaler 646 F.3d 191 (5th Cir.2011)

Petitioner respectfully asks the court for a continued stay of this federal proceedings. Currentley his filed DNA motion is tolling approximatley 2 months until he is time barred. Hutson V. Quarterman 508 F.3d 236 (5th Cir. 2007) He would have already pursued a writ of habeas corpus over his conviction but the state court is not allowing him due to the appeal he has pending over his transcript motion. Once petitioner recieves a final disposition over his transcripts appeal he will imediatley refile his 11.07 Habeas Corpus and notify this court upon the state court arriving at a disposition.

If for some reason the court will not continue the stay in this proceeding, as the state court dismissed his habeas corpus erroneously he asks the court for allowance to proceed and adjudicate his claims in his federal habeas corpus. Petitioner duly tried to exhaust his claims in the state court within the 1 year time limit. Because the state court dismissed his petition on an ~~inadequate and~~ not frimly established rule and the fact that he has had no attorney in this proceeding he believes the court would be able to rule on his claims denova instead of the unreasonable standard. Canales V. Stephens 765 F.3d 551 (5th Cir. 2014)

Again Petitioner's intention is to comply with the courts order. He asks the court for a continued stay until his transcript appeal is disposed of and he is able to have his habeas corpus ruled on. Petitioner currentley requests a stay also at this time until his DNA motion is diposed of.

Respectfully Submitted

Noe Armando Artiga#19584587
Robertson Unit
12071 F.M. 3522
Abilene, Tx 79601

FILEDChris Daniel
District Clerk

JUL 25 2016

Time:

Harris County, Texas

By:

Deputy

EX PARTE

1333910-A

Cause No. ~~1445930~~-A§ IN THE 182nd DISTRICT COURT

§ OF

NOE ARMANDO ARTIGA,

Applicant

§ HARRIS COUNTY, TEXAS

**STATE'S PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Court has considered the application for writ of habeas corpus, the State's answer, and official court records in the above-captioned cause. The Court finds that there are no controverted, previously unresolved facts material to the legality of the applicant's confinement which require an evidentiary hearing and recommends ~~1445930~~-A that the instant habeas application, cause number ~~1445930~~-A, be dismissed because the applicant has not received a final felony conviction in the primary case, and therefore cannot invoke the proper jurisdiction of Article 11.07.

THE CLERK IS **ORDERED** to prepare a transcript of all papers in cause number 1445930-A and transmit same to the Court of Criminal Appeals as provided by TEX. CRIM. PROC. CODE ANN. art. 11.07 (West 2015). The transcript shall include certified copies of the following documents:

1. The application for writ of habeas corpus;
2. The State's answer;
3. The Court's order;
4. The indictment and the docket sheets in cause number ~~1445930~~;

1333910

7/27/16

5. The Court's Findings of Fact and Conclusions of Law; and
6. The State's and Applicant's Proposed Findings of Fact and Conclusions of Law (if any).

THE CLERK is further ORDERED to send a copy of this order to, Noe A. Artiga, TDCJ# 1984587 Robertson Unit, 12071 FM 3522, Abilene, Texas 79601; and to counsel for the State, Andrew Smith, 1201 Franklin, Suite 600, Houston, Texas 77002.

By the following signature, the Court adopts the State's Proposed Findings of Fact, Conclusions of Law and Order in Cause No. 1445930-A.

Signed on this _____ day of JUL 27 2016, 2016.



JUDGE PRESIDING, 182nd DISTRICT COURT
HARRIS COUNTY, TEXAS

1335910-A

Cause No. ~~1445930~~-A

EX PARTE

§ IN THE 182nd DISTRICT COURT

§ OF

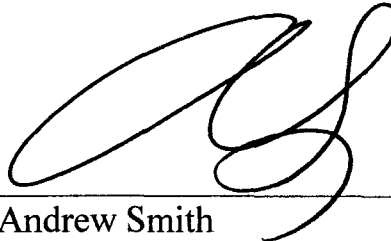
NOE ARMANDO ARTIGA,
Applicant

§ HARRIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

The undersigned counsel certifies that I have served a copy of the *State's Proposed Findings of Fact, Conclusions of Law, and Order* in cause number ~~1445930~~ **1335910**-A to the applicant on July 25, 2016, by mail as follows:

Noe Armando Artiga
TDCJ# 1984587 Robertson Unit
12071 FM 3522
Abilene, Texas 79601



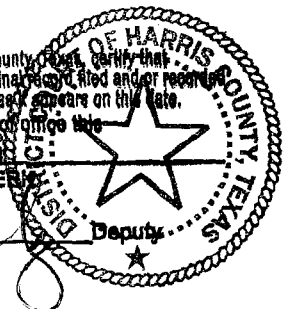
Andrew Smith
Assistant District Attorney
Harris County, Texas
1201 Franklin, Suite 600
Houston, Texas 77002
(713) 755-5990
(713) 755-5240 Fax
Texas Bar I.D. #24048100

Prepared by:
Florencio Moreno – Intern

**STATE OF TEXAS
COUNTY OF HARRIS**

I, Chris Daniel, District Clerk of Harris County, Texas, certify that
this is a true and correct copy of the original record filed and/or recorded
in my office, electronically or hard copy, and appears on this date.
Witness my official hand and seal of office this

JUL 28 2016
CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS



No. 01-16-00363-CR

In the
Court of Appeals
For the
First District of Texas
At Houston

No. 1333910

In the 182nd District Court
Of Harris County, Texas

NOE ARMANDO ARTIGA

Appellant

V.

THE STATE OF TEXAS

Appellee

STATE'S APPELLATE BRIEF

DEVON ANDERSON
District Attorney
Harris County, Texas

ALAN CURRY
State Bar No: 05263700
Assistant District Attorney
Harris County, Texas

JOHN LEWIS
Assistant District Attorney
Harris County, Texas

1201 Franklin, Suite 600
Houston, Texas 77002
Tel.: 713/755-5826
FAX No.: 713/755-5809

ORAL ARGUMENT REQUESTED ONLY IF REQUESTED BY APPELLANT

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to TEX. R. APP. P. 9.4(g) and TEX. R. APP. P. 39.1, the State requests oral argument only if oral argument is requested by the appellant.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

Complainant, victim, or aggrieved party:

Jonathan Hernandez

Counsel for the State:

Devon Anderson — District Attorney of Harris County

Alan Curry — Assistant District Attorney on appeal

John Lewis — Assistant District Attorney at trial

Appellant or criminal defendant:

Noe Armando Artiga

Counsel for Appellant:

Thomas Lewis — Counsel at trial

Trial Judge:

Hon. Jeannine Barr — Presiding Judge

Hon. Frank Price — Visiting Judge

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CASES

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RULES

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TEX. R. APP. P. 39.1 i

TEX. R. APP. P. 9.4(g) i

TO THE HONORABLE COURT OF APPEALS:

STATEMENT OF THE CASE

The appellant was charged with the felony offense of murder (C.R. 5). The appellant entered a plea of guilty to the offense without an agreed recommendation from the State as to punishment (C.R. 20-21; R.R. II-5). After the trial court found the appellant guilty of the charged offense, she assessed the appellant's punishment at confinement for 50 years in prison (C.R. 33; R.R. II-6; R.R. III-151). The appellant did not file a notice of appeal from the judgment and sentence, but instead filed a notice of appeal from the trial court's ruling on the appellant's Motion to be Provided/Furnished Free Copy of Court Reporter's Proceedings and Transcripts in Support of Filing a Writ of Habeas Corpus (C.R. 51).



STATEMENT OF FACTS

The State challenges all factual assertions in the appellant's brief and presents its account of the facts within its reply to the appellant's issues for review.



SUMMARY OF THE ARGUMENT

The appellant has not brought an appeal from an appealable order, and his appeal should be dismissed.

REPLY TO ISSUES FOR REVIEW

The appellant claims that the trial court erred in denying his Motion to be Provided/Furnished Free Copy of Court Reporter's Proceedings and Transcripts in Support of Filing a Writ of Habeas Corpus. A court of appeals does not have jurisdiction to review interlocutory orders, unless that jurisdiction has been expressly granted by law. *Ragston v. State*, 424 S.W.3d 49, 52 (Tex. Crim. App. 2014); *Apolinar v. State*, 820 S.W.2d 792, 794 (Tex. Crim. App. 1991). No statute vests this Court with jurisdiction over an appeal from an order denying a request for a free copy of the trial record when the request is not presented in conjunction with a timely-filed direct appeal. *See Self v. State*, 122 S.W.3d 294 (Tex. App.—Eastland 2003, no pet) (dismissing appeal for want of jurisdiction where trial court denied defendant's request for free copy of trial court's records to prosecute post-conviction writ of habeas corpus); *See also Escobar v. State*, 880 S.W.2d 782 (Tex. App.—Houston [1st Dist.] 1993, no pet.); *Richard v. State*, No. 01-16-00196-CR, 2016 WL 1470029 (Tex. App.—Houston [1st Dist.], Apr. 14, 2016) (not published).

STATE OF TEXAS
PENALTY FOR
PRIVATE USE

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FIRST CLASS



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11/2/2016

ARTIGA, NOE ARMANDO Tr. Ct. No. 1333910-A

WR-84,603-02

This is to advise that the Court has dismissed without written order the application for writ of habeas corpus. .

4F 46T

Abel Acosta, Clerk

NOE ARMANDO ARTIGA
ROBERTSON UNIT - TDC # 1984587
12071 FM 3522
ABILENE, TX 79601

MIWNGB 79601

